

## Notice of Request for Comment

**SUMMARY:** The Office of Federal Procurement Policy is issuing this Request for Comment to invite comment from the public on whether changes to current regulations and other guidance might improve contracting officers' access to relevant information about contractor business ethics in the Federal Awardee Performance and Integrity Information System ("FAPIIS"). FAPIIS is designed to facilitate the Government's ability to evaluate the business ethics of prospective contractors and protect the Government from awarding contracts to contractors that are not responsible sources. *Note:* A notice announcing this Request for Comment was published in the Federal Register on July 18, 2012.

**DATES:** Interested parties should submit comments in writing to one of the addresses below on or before September 17, 2012.

**ADDRESSES:** All comments should be submitted via one of the following methods:

Online at: <http://www.regulations.gov>.

Fax: 202-395-5105.

Mail: Office of Federal Procurement Policy, ATTN: Ryan Burnette, New Executive Office Building, Room 9013, 725 17th Street, NW, Washington, DC 20503.

Instructions: Please submit comments only and include your name, company name (if any), and cite "Request for Comment on Contracting Officers' Access to Relevant Integrity Information" in all correspondence. All comments received will be posted, without change or redaction, to [www.regulations.gov](http://www.regulations.gov), so commenters should not include information that they do not wish to be posted (*e.g.* personal or confidential business information). Due to potential delays associated with mail screening and processing, electronic submission is preferred.

**FOR FURTHER INFORMATION CONTACT:** Mr. Ryan Burnette, OFPP, at (202) 395-7724 or [rburnette@omb.eop.gov](mailto:rburnette@omb.eop.gov).

**SUPPLEMENTARY INFORMATION:** FAPIIS was launched in the Spring of 2010 to significantly enhance the scope of information available to contracting officers as they evaluate the integrity and performance of prospective contractors. Access to readily available Government-wide information that a contracting officer would routinely consider when making a responsibility determination historically has been limited to debarment and suspension actions, which are maintained in the Excluded Parties List System ("EPLS"). FAPIIS expands the information made available to contracting officers. In addition to providing one-stop access to EPLS, FAPIIS also includes contracting officers' non-responsibility determinations (*i.e.*, agency assessments that prospective contractors do not meet requisite responsibility standards to perform for the Government), contract terminations for default or cause, agency defective pricing determinations, administrative agreements entered into by suspension and debarment officials to resolve a suspension or debarment, and contractor self-reporting of criminal convictions, civil liability, and adverse administrative actions. Further, FAPIIS provides access to past performance evaluations for consideration in future source selections. Past performance evaluations are excluded from disclosure to the public per section 3010 of Public Law 111-212. Other information may be added to FAPIIS in the future.

The information in FAPIIS comes from different sources, including from the Central Contractor Registration (“CCR”), which provides information on all vendors registered to do business with the Federal Government. Information in the CCR is organized by Data Universal Numbering System (“DUNS”) numbers, which serve as unique identifiers for business entities. Every vendor that seeks to do business with the Government must register in CCR and report its DUNS number. FAR 4.1100; FAR 52.204-7. If a vendor is submitting a bid or proposal on a procurement valued at more than \$500,000 and has current active Federal contracts and grants with a total value greater than \$10 million, the vendor must report criminal convictions, civil liability, and adverse administrative actions into CCR. FAR 52.209-7. This information, along with other information entered directly into FAPIIS, such as by contracting officers and suspension and debarment officials, is subsequently made available, both for the instant procurement and for future procurements in FAPIIS. Contracting officers pull information from FAPIIS by the DUNS number that the offeror identifies in its proposal. See FAR 52.204-6 and 52.212-1 (requiring vendors to provide the DUNS number recorded in CCR that identifies the offeror’s name and address exactly as stated in the offer). Vendors awarded a government contract are required to update the information in CCR every six months, for the duration of the contract. FAR 52.209-9.

Although FAPIIS provides improved information access to contracting officers making responsibility determinations, some contend that certain practices associated with the CCR and the reporting of unique identifiers are limiting contracting officers’ access to potentially relevant data about contracting entities. In particular, the CCR Users Guide requires vendors to maintain a unique DUNS for each physical location or different business address in an organization. See Central Contractor Registration User's Guide (Oct. 2011), available at <https://www.bpn.gov/ccr/doc/CCRUsersGuide.pdf>. The Government does not currently associate all DUNS numbers of a corporate entity. Thus, a contracting officer cannot determine if there may be relevant information reported under different DUNS numbers assigned to other locations at which the entity named on the contract conducts business or under different DUNS numbers assigned to other parts of the corporate entity that are not named on the contract, such as an affiliate or subsidiary, but share the same management, infrastructure, and systems as the entity uses in doing business with the Government.

Some interested stakeholders recommend that changes be made to the Government’s policies, practices, and systems, as necessary, to enhance the contracting officers’ ability to review relevant information, both from different locations at which the named entity is doing business and from other affiliates and subsidiaries. OFPP has initiated an effort to evaluate the benefits and costs associated with making these policy and practice changes, and is issuing this notice to elicit feedback that can be used to help in evaluating whether changes might be considered.

The General Services Administration (“GSA”) is conducting a separate, but related, analysis to evaluate the different capabilities in the commercial marketplace to meet the Government’s needs for unique contractor identifiers. GSA published a “Sources Sought” document to help inform its acquisition officials as they consider a potential future competition for these requirements. A copy of the “Sources Sought” may be obtained through Federal Business Opportunities (FedBizOpps.Gov) at <https://www.fbo.gov/index?s=opportunity>

&mode=form&id=4cfa1aa7d67a29f5aeb3146f1cbf4758. Analysis of feedback from the “Sources Sought” document may also help the Federal Acquisition Regulatory (“FAR”) Council to better understand the market’s ability to help Government agencies identify the relationship between different parts of an entity (a so-called “corporate hierarchy”) so that information on the activities of relevant parts of the contracting entity can be more easily identified in FAPIIS and evaluated by contracting officers.

The Department of Defense (“DoD”) is also evaluating how it can better understand the corporate structure and affiliations of its suppliers to support implementation of business tools that require identification of supplier relationships to facilitate better buying decisions. On November 15, 2011, DoD held a public meeting to establish an initial dialogue with industry and Government agencies about developing a method by which offerors, if owned or controlled by another business entity, can identify to DoD the Commercial and Government Entity (“CAGE”) code and legal name of that business entity. See 76 Fed. Reg. 64902 (October 19, 2011). Although DoD’s evaluation does not address business integrity information and focuses solely on defense contractors, its review may shed additional light on challenges and issues associated with the collection of this information and the ability to consistently, uniquely and easily identify corporate ownership of contractors.

Accordingly, OFPP welcomes input on whether changes to current policies and other guidance might improve contracting officers’ access to relevant information about a contractor’s business integrity and, in turn, make better responsibility determinations. OFPP especially encourages comment in response to the following questions:

1. Do current data collection policies and practices associated with FAPIIS provide contracting personnel with access to the information they need about a potential contractor’s business ethics? Why or why not?
2. If current policies and practices do not provide access to adequate information, please describe what changes should be considered to improve access to relevant information.
3. If not already addressed in response to question 2, please discuss the benefits and drawbacks of modifying current data collection policies supporting FAPIIS to--
  - (i) Capture integrity information reported under each DUNS number assigned to the legal entity named in the offer, irrespective of its geographic location (*e.g.*, Affiliate XYZ located on Main Street, Affiliate XYZ located on First Street, and Affiliate XYZ located on K Street); and
  - (ii) Capture integrity information about an entire entity (*e.g.*, headquarters, all affiliates and subsidiaries, *etc.*).
4. What policy or other guidance changes should be considered (if any) to further assist agency personnel in determining what information is relevant to making a responsibility determination?

5. If broadened access to information is needed, what is the best way to obtain the additional relevant information? Respondents may wish to address the following potential data collection policies as part of their response:
  - (i) Seek to have a third-party contractor provide information on “corporate hierarchies” to the Government.
  - (ii) Require contractors to report the requisite integrity information in CCR under each and every DUNS number associated with any part of the entity (*e.g.*, parent, subsidiary, affiliate) or location where it operates.
  - (iii) Require offerors to identify as part of their proposals all DUNS numbers associated with the entity that would be legally bound to perform work under the contract.
6. Should the regulatory drafters of the FAR consider a definition for the term “corporate entity”? Why or why not? If yes, what definition should be proposed?
7. The Regulatory Flexibility Act requires an impact analysis of any proposed rule on small entities, including small businesses, small nonprofit organizations and small governmental jurisdictions with populations under 50,000. OFPP encourages small entities to provide data on how they may be affected by potential changes in how contractors are identified for the purposes of Federal contracting and data collection.